

Mr. FEINGOLD. Madam President, I object.

Mr. THOMPSON. Madam President, I regret the objection of my colleague. At this time, I put Members on notice that I will attempt to get this issue agreed to on the next available bill. This is an important issue to many people in my State. Consequently, I hope to have the cooperation of a majority of colleagues when I move next to enact this legislation.

I yield the floor.

Mr. FEINGOLD. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### EFFORT TO REMOVE FEC GENERAL COUNSEL

Mr. FEINGOLD. Madam President, I rise to talk about an effort under way in this Congress to hamstring the agency charged with enforcing the Federal election laws—the Federal Election Commission. This effort is happening very quietly under the guise of routine agency appropriations, but it has deadly serious consequences in terms of the independence of the Federal Election Commission. I think it is important to call the Senate's attention to it and give notice that I intend to do everything in my power to make sure it doesn't happen.

Here is what is happening. The Appropriations Committee of the other body has included a provision in the funding bill for the FEC that would result in the firing of the Commission's general counsel and staff director. That's right, Madam President. The Congress is now going to get involved in the personnel decisions of the FEC, the agency that we have charged with overseeing us and the way we conduct our reelection campaigns. Some in the Congress want to fire two career civil servants who are simply trying to do their job to make campaign information available to the public and enforce the election laws.

Lawrence Noble, the General Counsel, has served the agency since 1987. John Surina, the Staff Director, has been in that position since 1983. These are not political appointees. They were put in their jobs by a bipartisan majority vote of the Commission, as required by law. In fact, both of these individuals were unanimously approved by the FEC when they were appointed. They provide crucial institutional continuity, especially now that, as of last year, we have put a one-term limit on the Commissioners themselves.

But now, unfortunately, some members of Congress apparently don't like some things that the Commission has done. And so they are trying to engineer, what I would call, a quiet coup. They want to require that these two staff positions be refilled every four years by an affirmative vote of four Commissioners. And they specify that this requirement will apply to the cur-

rent occupants of the positions. So Mr. Noble and Mr. Surina will lose their jobs at the end of this year, unless the Commission votes to reappoint them.

Of course, the Commission itself is in great turmoil. Only two members are serving the terms to which they were appointed. Two members are holdovers, their terms having expired in April 1995. A fifth member is also a holdover, although the President has resubmitted his name. And the sixth slot has been vacant since October 1995. So the Congress has hardly been blameless if the Commission seems at times to be at sea. And now here we are about to create two other vacancies, more turmoil and lack of direction at this crucial agency.

Madam President, specifying by law that top staff positions in the agency must be refilled every four years is unprecedented. The Congressional Research Service has told me that there are three independent agencies—the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, and the National Labor Relations Board—where the General Counsel is actually a political appointee, nominated by the President and confirmed by the Senate. In each of these cases, the General Counsel has direct statutory authority.

But in every other independent agency, including the FEC—and there are lots of agencies, Madam President—the FCC, the SEC, the CPSC, the FTC, the CFTC, and many more. In all of these agencies, the General Counsel is appointed by either the Chairman or the entire body.

And guess how many of those General Counsels are required to be fired after four years unless they are reappointed and reconfirmed by the appointing entity. The answer is none. Not one.

Madam President, I ask unanimous consent that a memorandum from the Congressional Research Service on this issue be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

To: Honorable Russell D. Feingold, Attention: Bob Schiff.

From: Rogelio Garcia, Specialist in American National Government, Government Division.

Subject: Appointments to Positions of General Counsel and of Staff Director on Independent Regulatory and Other Collegial Boards and Commissions.<sup>1</sup>

This memorandum responds to your request for information regarding appointments to the position of general counsel and of staff director, or its equivalent, or independent regulatory and other collegial boards and commissions. Specifically, you inquired about the number of such positions to which the President makes appointments with the advice and consent of the Senate. You also wanted to know if the positions included a fixed term of office, and, if they did, what happened to the incumbent when the term expired.

<sup>1</sup> See footnotes at end of memorandum.

The position of general counsel at three of 32 independent regulatory and other collegial boards and commissions is subject to Senate confirmation. (The position of staff director, where it exists is not subject to Senate confirmation in any of the 32 agencies.) The three requiring Senate confirmation are the Equal Employment Opportunity Commission (EEOC), Federal Labor Relations Authority (FLRA), and National Labor Relations Board (NLRB). The general counsel positions at the three agencies are for fixed terms of office. At the EEOC, the general counsel is appointed to a 4-year term, and remains in office at the end of the term until replaced (42 U.S.C. 2000e-4(b)); at the FLRA, the general counsel is appointed to a 5-year term, and must leave office when the term expires (5 U.S.C. 7104(f)(1)); and at the NLRB, the general counsel is appointed to a 4-year term and must leave office when the term expires (29 U.S.C. 153(d)).

It appears that the above three general counsel positions were made subject to Senate confirmation because of the special responsibilities assigned directly to them by statute. The general counsel for the EEOC is charged directly with responsibility for the conduct of litigation regarding the commission's enforcement provisions and civil actions.<sup>2</sup> The general counsel for the FLRA has direct statutory authority to investigate alleged unfair labor practices and file and prosecute complaints, as well as "direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices . . ."<sup>3</sup> Finally, the general counsel for the NLRB "exercise[s] general supervision over all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices, and has final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under [29 U.S.C. 160], and in respect of the prosecution of such complaints before the Board . . ."<sup>4</sup>

The general counsels at the other 29 agencies, and the staff director, where the position exists, are appointed either by the agency's governing board, i.e., the board of directors, or the chairman, subject to the general policies, directives, or approval of the governing board. In at least nine agencies, the governing board appoints the general counsel, staff director, and other employees.<sup>5</sup> In at least five agencies, the chairman, governed by the policies and directives of the governing body, makes the appointment.<sup>6</sup> In two agencies, the chairman makes the appointment on "behalf of the commission."<sup>7</sup> In one agency, the chairman appoints the general counsel and staff director, as well as certain other officers, subject to the approval of the commission.<sup>8</sup> Finally, in one agency, the chairman makes the appointment subject to disapproval by a majority vote of the commissioners.<sup>9</sup> None of the appointments is for a fixed term of office. They are all indefinite appointments, and, with two exceptions, the incumbents may be removed at any time by the appointing authority.<sup>10</sup>

If I may be of further assistance, please call me at 7-8687.

#### FOOTNOTES

<sup>1</sup> The position of general counsel in large independent agencies, and at the department level as opposed to the administration or bureau level, in each executive department is subject to Senate confirmation. None of the positions, however, is for a fixed term of office.

<sup>2</sup> 42 U.S.C. 2000e-4(b)(1).

<sup>3</sup> 5 U.S.C. 7104(f) (2) and (3).

<sup>4</sup> 29 U.S.C. 153(d).

<sup>5</sup> Commodity Futures Trading Commission (7 USC 4a (c) and (d)), Federal Communications Commission

(47 U.S.C. 154(f)(1)), Federal Election Commission (20 U.S.C. 437c(f)(1)), Federal Mine Safety Health Review Commission (30 U.S.C. 823(b)(2)), Federal Trade Commission (15 U.S.C. 42, National Mediation Board (45 U.S.C. 154 Third), Railroad Retirement Board (42 U.S.C. 231f(9)), Tennessee Valley Authority (16 U.S.C. 831b), and Securities and Exchange Commission (15 U.S.C. 78d(b)).

<sup>6</sup>Defense Nuclear Facilities Safety Board (42 U.S.C. 286(c)), Farm Credit Administration (12 U.S.C. 2245(b)), National Transportation Safety Board (49 U.S.C. 1111(e)(1)), Nuclear Regulatory Commission (42 U.S.C. 5841(a)(2)), and Surface Transportation Board (49 U.S.C. 701(a)(2)).

<sup>7</sup>Federal Energy Regulatory Commission (42 U.S.C. 7171(c)), and Occupational Safety and Health Review Commission (29 U.S.C. 661(e)).

<sup>8</sup>Consumer Product Safety Commission (15 U.S.C. 2053(g)(1)(A)).

<sup>9</sup>U.S. International Trade Commission (19 U.S.C. 1331(a)(1)).

<sup>10</sup>The chairman of the Consumer Product Safety Commission may remove the general counsel or executive director with the approval of the commission (15 U.S.C. 2053(g)(1)(B)); and the chairman of the U.S. International Trade Commission may remove the general counsel or other high official, subject to the approval of the governing body (19 U.S.C. 1331(c)(2)(A)).

Mr. FEINGOLD. Madam President, this is a whole new procedure invented, I have to assume, because some Members of Congress are, in effect, out to "get" Mr. Noble and Mr. Surina.

Oh, and by the way, there is not a single agency where the Staff Director is a political appointee or has to be reappointed by the commissioners themselves after a set term. Not one. Frankly, Madam President, the inclusion of the Staff Director in this provision in the House Appropriations bill seems to me to be a smokescreen designed to make this provision seem even-handed. What is really going on here, I believe, is that some in the Congress are trying to send a message to Mr. Noble, the General Counsel, and through him, to the Commission. Some powerful members of Congress don't like some of the cases that Mr. Noble has recommended bringing. So they want him out.

In recent years, the FEC has undertaken a number of controversial actions in an attempt to enforce the law that the Congress has written. Some of these cases have taken on powerful political figures or groups. The FEC pursued a highly publicized case against GOPAC, a group closely connected to the Speaker of the House. It has an ongoing action against the Christian Coalition alleging that that group illegally coordinated its activities with Republican candidates. And, of course, it has pursued cases and rulemaking proceedings under a more expansive definition of what constitutes express advocacy than some in this Congress believe is appropriate.

All of these actions are objectionable to people on the Republican side of the aisle. But let's remember that there is a flip side. The Commission has assessed significant fines against the 1992 Clinton campaign and the Kentucky Democratic Party. It has pursued litigation against the National Organization for Women and has pending cases against the California Democratic Party concerning its use of soft money, and the advocacy group Public Citizen, alleging that it coordinated its activities with a primary opponent of the Speaker of the House.

The bottom line, Madam President, is that the FEC is trying to do its job, even when we in Congress don't give it adequate resources to do it. And there is another crucial point about these actions. Each and every one of the cases or rulemakings I have mentioned was approved by a majority of the Commission.

Now that is significant, Madam President, because unlike most agencies, the FEC is evenly balanced with Republican and Democratic members. It was carefully designed not to allow either party to have control. So a General Counsel can't just work with one party. In order to file a case, he must get at least four votes from the Commission, including at least one from each party. Now that leads to problems sometimes, because if the Commission deadlocks, a General Counsel recommendation cannot go forward. But the bottom line is that every official action of the FEC must be bipartisan.

So what we have here, Madam President, is an effort to intimidate. The proponents of this firing want to punish the FEC's General Counsel for bringing forward recommendations to enforce the law. Even though in all of the cases I have mentioned, a bipartisan majority of the Commission has agreed with him.

I should mention one other recommendation that Mr. Noble has made that has not received a majority vote of the Commission, and so is not going forward yet. Mr. Noble has recommended that the Commission takes steps to reduce or eliminate certain kinds of soft money contributions. And we know there are some powerful Members of this body who disagree with that idea.

You know, it is really fascinating that some of the same people who are pushing this provision, trying to remove the current General Counsel say that we don't need to enact campaign finance reform, we just need to enforce current law. Well, you can't argue that we need to enforce current law and at the same time be trying to fire the chief law enforcement officer of the agency. That just doesn't make sense. If this provision goes through, and Mr. Noble is relieved of his duties at the end of the year, it may be months before a new General Counsel can be chosen that will get the bipartisan support that is required. So right after the 1998 elections, there will be no one to head up the crucially important enforcement functions of the FEC.

Madam President, we cannot let that happen. We need to let the professional staff of the FEC do its job. Surely the 3 to 3 party split on the Commission is enough to make sure that the Commission doesn't go off on a partisan vendetta. Now we need to stop the partisan vendetta that this proposal represents.

That is why I intend to offer an amendment when the FEC's appropriation bill comes to floor to make clear that the Senate does not want this House proposal to be part of the final

bill. And I will urge the President to veto this bill if it is included. I certainly hope, Madam President, that those who want to see our election laws enforced will vote with me when that amendment is offered.

Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CAMPBELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. CAMPBELL. I ask unanimous consent there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business Friday, June 19, 1998, the federal debt stood at \$5,493,981,708,739.93 (Five trillion, four hundred ninety-three billion, nine hundred eighty-one million, seven hundred eight thousand, seven hundred thirty-nine dollars and ninety-three cents).

One year ago, June 19, 1997, the federal debt stood at \$5,330,019,000,000 (Five trillion, three hundred thirty billion, nineteen million).

Twenty-five years ago, June 19, 1973, the federal debt stood at \$455,362,000,000 (Four hundred fifty-five billion, three hundred sixty-two million) which reflects a debt increase of more than \$5 trillion—\$5,038,619,708,739.93 (Five trillion, thirty-eight billion, six hundred nineteen million, seven hundred eight thousand, seven hundred thirty-nine dollars and ninety-three cents) during the past 25 years.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

##### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting one nomination which was referred to the Committee of the Judiciary.

(The nomination received today is printed at the end of the Senate proceedings.)

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated: